IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

Bail Appl..No. 4038 of 2007()

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CRIME NO.33/07 OF ARYANAD EXCISE RANGE.

PETITIONER/ACCUSED:

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SOBHANA, AGED 42 YEARS,
D/O. BHARATHI, MANGODE LAKSHAM VEEDU COLONY,
ARYANAD VILLAGE.

BY ADV. SRI.T.A.UNNIKRISHNAN
SRI.K.SATHEESH KUMAR

RESPONDENTS: COMPLAINANT:

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STATE OF KERALA,
REP. BY PUBLIC PROSECUTION, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 05/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R. BASANT, J.**

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**B.A.NO. 4038 OF 2007**

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Dated this the 5th day of July, 2007

**ORDER**

Application for anticipatory bail. The petitioner – a woman, faces allegations under the Kerala Abkari Act. Three litres of arrack were allegedly seized from the possession of the petitioner on 12/6/07. The petitioner could not be arrested as no woman officer was available in the Excise party which detected the crime. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that no useful purpose will be served by the formal arrest afresh of the petitioner. The petitioner may, in these circumstances, be granted anticipatory bail, prays the learned counsel for the petitioner.

3. This application is opposed by the learned Public

Prosecutor. The learned Public Prosecutor submits that there are no circumstances justifying the invocation of the discretion under Sec.438 of the Cr.P.C. The petitioner may be directed to appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek bail.

4. I find merit in the stand stand taken by the learned Public Prosecutor. No circumstances justifying the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C. are shown to exist. This, I am satisfied, is a fit case where the petitioner must resort to the ordinary and normal course of appearing before the Investigating Officer or the learned Magistrate having jurisdiction. He must then seek regular bail in the ordinary course. I have no reason to assume that such application of the petitioner will not be considered on merits, in accordance with law and expeditiously by the learned Magistrate.

5. In the result, this petition is dismissed. But I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and seeks bail,

after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself.

Sd/-

**(R. BASANT, JUDGE)**

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P.S. to Judge